



C.2.b.

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Agency of Administration

Memorandum

To: Joint Fiscal Committee

From: Mike 'Obie' Obuchowski, Commissioner *M/O*

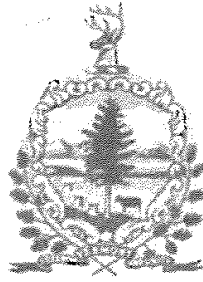
Date: July 14, 2011

Subject: Historic Property Stabilization and Rehabilitation Special Fund Proposal

CC: Jeb Spaulding, Secretary of Administration

As required in Sec. 30, (29 VSA § 155(b)) of Act 40 of 2011 (the Capital Bill) BGS & Historic Preservation deliver the attached proposal for your review and hopefully your approval. The proposal has been approved by the Chairs of the Senate Institutions and House Corrections and Institutions Committees required by the statute. We appreciate the cooperation and collaboration of the parties that resulted in the proposal.





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STATE OF VERMONT
LEGISLATURE

MEMORANDUM

To: Joint Fiscal Committee
From: Senator Robert Hartwell, Chair, Senate Committee on Institutions
Representative Alice Emmons, Chair, House Committee on Corrections and Institutions
Date: July 14, 2011
Subject: Historic Property Stabilization and Rehabilitation Special Fund Proposal

In Sec. 30 of Act 40 of 2011 (the Capital Bill) the legislature established a special fund related to historic property. A proposal for this program has been developed and you have received a copy of this proposal.

As required by Sec. 31 of this Act, we have reviewed the proposal. We approve of the July 7 proposal for the Historic Property Stabilization and Rehabilitation Special Fund and recommend that the Joint Fiscal Committee approve this proposal.

Act 40 Sec. 31. TRANSITION; FUNDING

(a) On or before July 15, 2011, the department of buildings and general services and the division for historic preservation shall develop a proposal for the program required in Sec. 30, 29 V.S.A. § 155(b), of this act and shall present the proposal to the chairs of the house committee on corrections and institutions and the senate committee on institutions. The chairs shall review the proposal and recommend to the joint fiscal committee whether or not to approve the proposal. After review of the proposal and the chairs' recommendations, the joint fiscal committee shall approve the proposal, disapprove the proposal, or direct the departments to amend and resubmit the proposal to the chairs by a date certain.

Approved 7/14/2011 by e-mail

A handwritten signature in black ink, appearing to be "H. J.", written over a circular scribble.

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Historic Property Stabilization and Rehabilitation Special Fund Proposal (“Stabilization Fund Proposal”)

1. Purpose

The purpose of the Fund is to fund stabilization and rehabilitation of BGS-owned and DHP-owned historic properties from the net proceeds realized from the sale and/or lease of vacant, underutilized, or out-of-mission historic properties. This Proposal describes how the Fund program will be implemented.

2. Summary

All state agencies own and manage historic properties and there are not enough monies to maintain and manage all of them. The Department of Buildings and General Services (BGS) owns and/or administers over 150 buildings that have been identified as historic. Most are actively used for state programs and services and are very well preserved. Some, however, are vacant or underutilized, with little prospect for productive use. In times of tight budgets, they often lack maintenance and are edging toward “demolition by neglect.” The establishment of the Historic Property Stabilization and Rehabilitation Special Fund (“Fund”) and program is an innovative response to this problem, one that prioritizes underutilized properties for stabilization and rehabilitation, provides a revenue stream to help fund needed repairs, and fosters the lease or sale of properties that would better serve non-state purposes. Included in the list of properties for possible lease or sale are some owned by the Division for Historic Preservation (“DHP”) that are not related to the mission of the DHP’s State-owned Historic Sites program and are not open to the public.

The Fund is not meant as a substitute for capital budget support for the State-owned Historic Sites that are maintained by the DHP and open to the public. The State-owned Historic Sites that are open to the public will continue to be funded in the capital budget. However, three properties that are currently not officially open to the public, Kent Tavern, the Theron Boyd House, and Forestdale Iron Furnace may use monies from the Fund to supplement capital budget appropriations for work necessary to stabilize and maintain them.

It is the intention of the State that historic properties that have received investments from the Historic Property Stabilization and Rehabilitation Special Fund will be kept by the State in its portfolio. However, if the Commissioner of BGS determines, based upon a recommendation from the Advisory Group, that an investment from the Fund is necessary to secure a building from further deterioration, or to conduct an archeological study, or for any other necessary purpose PRIOR to sale, then use of the Fund is appropriate, and the historic property can be removed from the State’s portfolio.

3. Background

Vermont statute (22 VSA 14) directs State agencies to preserve the historic buildings and archeological resources in their portfolio, while avoiding unreasonable economic burden to the public.

The Vermont Advisory Council on Historic Preservation first conceptualized the idea of the Fund in response to reviewing requests from state agencies to demolish unused historic buildings in their

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ownership. In 2010, the House Committee on Institutions and Corrections expressed interest in finding better ways for dealing with under-utilized state-owned properties, many of them historic. Responding to this, BGS Commissioner Gerry Myer worked with SHPO Giovanna Peebles and DHP staff, the Council, and the more broadly charged Governor's Study Committee on Heritage Stewardship to propose such a program to the General Assembly in 2011. BGS and DHP developed details about how the program could work and inventoried their own buildings to identify ones for possible participation in the program and presented the information to the General Assembly in 2011. The Fund was established in the FY2012-13 Capital Bill, and included a requirement that BGS and DHP develop a proposal by July 15, 2011 to present to the Institutions committees and the Joint Fiscal Committee. This report is meant to fulfill that requirement.

This is a pilot project for vacant, underutilized, and out-of-mission historic properties owned by BGS and DHP. It may be expanded in the future to include vacant, underutilized, and out-of-mission historic properties owned by other state agencies.

Full statutory references are included in Appendix I and relevant Capital Bill excerpts are included in Appendix II.

4. Management of the Fund

The Fund will be managed by and under the authority and control of the BGS Commissioner.

The BGS Commissioner will manage the program associated with the Fund with a dedicated Advisory Group consisting of: a BGS Commissioner designee; the State Curator and Assistant State Curator; the State Historic Preservation Officer or designee and Historic Sites Chief or designee; and the Commissioner of the Department of Economic, Housing and Community Development or designee. The Advisory Group will make recommendations to the BGS Commissioner on the operations of the Fund.

The BGS Commissioner, working with the Advisory Group, will submit a Report to the Legislature by January 15 of each year, developed on the following timetable and outline:

- Annual Review meeting between BGS and DHP held by November 1 of each year
- Draft of Report circulated to DHP and Advisory Council on Historic Preservation by December 1 of each year
- The Report will include information on deposits, disbursements, properties sold and stabilized or rehabilitated, and BGS's and DHP's plans for future property transfers, leases and stabilization or rehabilitation of state-owned properties, and recommendations for changes and improvements in the program.

The Advisory Group will meet and request disbursements from the Fund as needed. Requests will be presented to the BGS Commissioner for his/her review and final approval.

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5. Deposits Into the Fund

The Fund was capitalized with \$100,000 seed money in the FY 2012 capital bill.

The FY 2012 capital bill authorized the deposit of net revenues from the sale of the 3469 Lower Newton Road in St. Albans, from the sale or lease of the Fuller Farmhouse at the Hubbardton Battlefield, from the donation of the Hyde Log Cabin in Grand Isle, from the sale or lease of the Bishop Cabin at Mount Independence, from the donation of the Bradley Law Office, and from the donation or sale of the Eureka Schoolhouse in Springfield.

BGS Commissioner will deposit net revenues from the sale of underutilized state-owned historic properties into the Fund. BGS and DHP request that the General Assembly provide further clarification whether its intent is to require specific authorization on a building by building basis for net proceeds to be deposited in the Fund.

The Fund balance on November 15 of any year is capped at \$250,000. Unobligated monies in excess of that amount will be reallocated by the General Assembly for other purposes in the next enacted capital appropriations bill. The BGS Commissioner may seek additional appropriations for the Fund through the Capital Budget.

Historic properties transferred out of state ownership will be protected with a covenant and/or historic preservation easement that protects the exterior of the building, interior features if there are outstanding interior features, and if warranted, associated property and landscape features, and/or archeological sites on the property. Covenants are recorded with the deed of a property and rely on voluntary compliance by the owner. They may include consultation with DHP. Easements are also recorded with the deed and are held by an organization that regularly monitors compliance. The Preservation Trust of Vermont runs Vermont's historic preservation easement program and will hold the easements generated through activities of the Fund. The DHP will recommend historic features that should be protected in each easement.

6. Disbursements From the Fund

The Fund can be used for: 1) rehabilitation or stabilization of state-owned historic properties; 2) payment of costs of historic resource evaluations, archeological investigations, and/or building assessments related to potential sale or lease; 3) easement stewardship fees; and 4) other related expenses.

The Fund will be available for payment of easement stewardship fees which cover baseline documentation and annual stewardship monitoring.

7. Selection of Buildings for the Program

BGS and DHP have completed inventories of vacant, underutilized, and/or out-of-mission historic properties for potential stabilization, rehabilitation, lease, transfer, or removal. Associated cost estimates are included in the assessments. The list may be modified and expanded in the future.

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It is recommended that participating agencies consider use of vacant and underutilized buildings and historic properties for agency purposes before concluding that they should be transferred or leased.

De-accessioning historic buildings should be based on the following Criteria:

- a building is not suited to serve a mission-related purpose;
- it will better serve the public in non-state ownership and/or use; and,
- it will have a better opportunity for long-term preservation than if it remained in state ownership.

By November 1 of each year, BGS and DHP will hold an Annual Review meeting to review activities and accomplishments of the program during the previous year, select the priority projects that will be funded in the following calendar year, and ensure that no funds above \$250,000 remain unobligated.

If in the future, the program is expanded to include other state agencies and departments, a prerequisite for participation will be a completed inventory of the historic status of the properties that the agency or department administers, and a recommended list of properties for potential stabilization, rehabilitation, lease, transfer, or removal, along with associated cost estimates.¹

8. Legislative Clarifications Requested in 2012

a) The current authorization requires that the fund be comprise "*net revenue from the sale of underutilized state-owned historic property.*" This authorization does not specify that net proceeds from the lease of historic properties may be deposited in the Fund. **Recommend that the General Assembly amend 29 V.S.A. 155 Section 30 to include lease revenues.**

b) The current authorization requires that "*if the fund balance exceeds \$250,000.00 as of November 15 in any year, then the general assembly shall reallocate the excess funds for other purposes in the next enacted capital appropriations bill.*" **Recommend that the General Assembly (1) clarify its intent on whether the funds can be "obligated" rather than "spent," and (2) clarify at what point the "obligation" occurs (i.e. after the Commissioner of BGS has approved the use of the fund for a certain project? Or, after a bid proposal has been accepted? Or, at another point in the process? Recommend that obligating the funds is sufficient to retain them in the Fund.**

c) The \$250,000 cap may be too low. **Recommend that the General Assembly review the current cap of \$ 250,000 during budget adjustment.**

¹ In fact, Sections 40 and 44 of Act No. 40 (H. 446) require that the Agency of Natural Resources and VTrans, respectively, compile an inventory of unused and under-used buildings to assess efficiency of operations, energy usage, and potential sale and consolidation. The General Assembly may want to consider these inventories in de-accessioning historic properties in accordance with this Proposal.

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Some Examples of Historic Properties in this Program:

Example of a BGS historic property that will sold. Net revenue from sale will be deposited in the Fund.



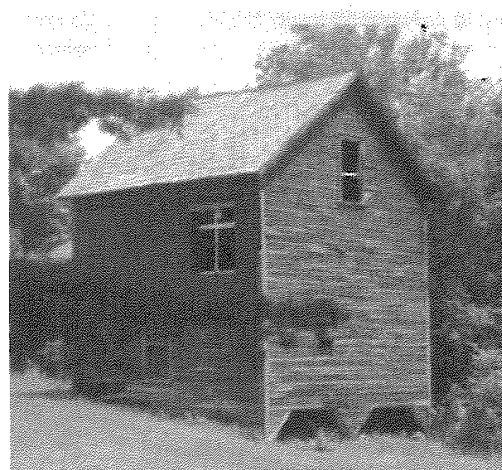
3469 Lower Newton Road, St. Albans

Example of a DHP historic property that will sold or leased. Net revenue from sale (or lease) will be deposited in the Fund.



441 Frog Hollow Rd, Hubbardton

Example of a BGS historic property that will be stabilized and rehabilitated with the Fund.



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Vermont Sanitorium, Pittsford

Appendix I

Title 22: Libraries, History, and Information Technology

Chapter 14: HISTORIC PRESERVATION

22 V.S.A. § 701. Definitions

(6) "Historic property" or "resource" means any building, structure, object, district, area or site that is significant in the history, architecture, archeology or culture of this state, its communities or the nation.

22 V.S.A. § 743. Cooperation of agencies

An agency, department, division or commission shall:

(1) Consult the Vermont advisory council on historic preservation before demolishing, altering or transferring any property that is potentially of historical, architectural, archeological or cultural significance, including any property listed on the state register. An agency, department, division or commission shall submit its annual capital improvement plan to the council.

(2) Initiate measures and procedures to provide for the maintenance, through preservation, rehabilitation or restoration, of properties under its ownership that are listed on the state or National Register; the measures and procedures shall comply with applicable standards prescribed by the state historic preservation division.

(3) Develop plans for the maintenance, through preservation, rehabilitation or restoration, of historic properties under their ownership in a manner compatible with preservation objectives and which does not result in an unreasonable economic burden to public interest.

(4) Institute procedures to assure that its plans, programs, codes and regulations contribute to the preservation and enhancement of sites, structures and objects of historical, architectural, archeological or cultural significance. (Added 1975, No. 109, § 4.)

22 V.S.A. § 742. Duties and powers of the council

(7) Provide an advisory and coordinative mechanism by which state undertakings of every kind which are potentially deleterious to historic preservation may be discussed, and, where possible, resolved, giving due consideration to the competing public interests which may be involved. The head of any state agency or department having direct or indirect jurisdiction over a proposed state or state-assisted undertaking, or independent agency having authority to build, construct, license, permit, authorize or approve any undertaking, shall prior to the approval of the state funds for the undertaking, or prior to any approval, license, permit or authorization as the case may be, take into account the effect of the undertaking on any historic property that is included in the state register of historic places. Where, in the judgment of the council such undertaking will have an adverse effect upon any listed district, area, site, building, structure or object, the head of the state agency or department shall afford the council reasonable opportunity to comment with regard to the undertaking.

(8) Advise on any participation in the review of federal, federally assisted, and federally licensed undertakings that may affect historic properties and sites and approve any participation in the review of nonfederal undertakings, including, but not limited to proceedings under the state land use and development act (10 V.S.A. chapter 151).

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22 V.S.A. § 765. Transfer of state property

When transferring real property under its jurisdiction that contains significant archeological, aboriginal or other anthropological resources, the state, may, upon the recommendation of the state historic preservation officer, with the advice of the state archeologist, condition the transfer upon such covenants, deed restrictions or other contractual arrangements as will limit the future use of the property in such a way as will protect those resources. (Added 1975, No. 109, § 4; amended 1995, No. 46, § 47.)

22 V.S.A. § 766. Reservation of lands to be sold

Upon written notice to the head of a state agency administering state lands, given by the state historic preservation officer, with the advice of the state archeologist, the agency head shall reserve from sale any state lands, including lands forfeited to the state for nonpayment of taxes, on which sites or artifacts are located or may be found, as designated by the state archeologist under section 763 of this title, provided, however, that the reservation of the lands from sale may be confined to the actual location of the site or artifacts. When the sites or artifacts have been explored, excavated or otherwise examined to the extent desired by the state archeologist, he or she shall then file with the agency head a statement releasing the lands and permitting their sale. (Added 1975, No. 109, § 4; amended 1995, No. 46, § 48.)

22 V.S.A. § 767. Cooperation between agencies

All state agencies, departments, institutions and commissions, as well as all municipalities, shall cooperate fully with the state archeologist in the preservation, protection, excavation, and evaluation of specimens and sites; and to that end:

- (1) When any state, regional or municipal agency finds or is made aware by an appropriate historical or archeological authority that its operation in connection with any state, state assisted, state licensed, or contracted project, activity, or program adversely affects or may adversely affect scientific, historical, or archeological data, the agency shall notify the state archeologist and shall provide him or her with information concerning the project, program, or activity. The provisions of this chapter shall be made known to contractors by the state agencies doing the contracting.
 - (2) The state archeologist, upon notification or determination that scientific, historical, or archeological data including specimens, is or may be adversely affected, shall, after reasonable notice to the responsible agency, conduct or cause to be conducted a survey and other investigations to recover and preserve or otherwise protect such data, including analysis and publication, which in its opinion should be recovered in the public interest.
 - (3) The division shall initiate actions within 60 days of notification under subdivision (1) of this subsection and within such time as agreed upon in other cases. The responsible agency is authorized and directed to expend agency funds for the purpose of recovering the data, including analysis and publications, and the costs shall be included as part of the contractor's costs if the adverse effect is caused by work being done under contract to a state agency. (Added 1975, No. 109, § 4.)
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Appendix II

No. 40. An act relating to capital construction and state bonding. (H.446)

Sec. 25. PROPERTY TRANSACTIONS; MISCELLANEOUS

(f) Following consultation with the state advisory council on historic preservation as required by 22 V.S.A. § 742(7) and pursuant to 29 V.S.A. § 166, the commissioner of buildings and general services is authorized to subdivide and sell the house, barn, and up to 10 acres of land at 3469 Lower Newton Road in St. Albans. Net proceeds of the sale shall be deposited in the historic property stabilization and rehabilitation fund established in Sec. 30 of this act.

Sec. 26. PROPERTY TRANSACTIONS; MISCELLANEOUS

(b) The commissioner of buildings and general services on behalf of the division for historic preservation is authorized to enter into the agreements specified for the following properties, the proceeds of which shall be dedicated to the fund created by Sec. 30 of this act:

- (1) Fuller farmhouse at the Hubbardton Battlefield state historic site, authority to sell or enter into a long-term lease with covenants.
- (2) Hyde log cabin in Grand Isle, authority to donate property free of covenants to Grand Isle or, in the alternative, to donate the building to Hyde Park, or in the alternative to sell the property.
- (3) Bishop Cabin at Mount Independence State Historic Site in Orwell, authority to sell or enter into a long-term lease with covenants on the land.
- (4) Eureka Schoolhouse in Springfield, authority to transfer with covenants to a local organization or, in the alternative, to sell the property.
- (5) Bradley Law Office in Westminster, authority to transfer with covenants to a local organization.

Sec. 30. 29 V.S.A. § 155 is added to read:

§ 155. HISTORIC PROPERTY STABILIZATION AND REHABILITATION SPECIAL FUND

(a) There is established a special fund managed by and under the authority and control of the commissioner, comprising net revenue from the sale of underutilized state-owned historic property to be used for the purposes set forth in this section. Any remaining balance at the end of the fiscal year shall be carried forward in the fund; provided, however, that if the fund balance exceeds \$250,000.00 as of November 15 in any year, then the general assembly shall reallocate the excess funds for other purposes in the next

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enacted capital appropriations bill.

(b) Monies in the fund shall be available to the department for the stabilization or rehabilitation of state-owned historic property pursuant to a program created jointly by the department of buildings and general services and the division for historic preservation of the agency of commerce and community development.

(c) On or before January 15 of each year, the department shall report to the house committee on corrections and institutions and the senate committee on institutions concerning deposits into and disbursements from the fund occurring in the previous calendar year, the properties sold and stabilized or rehabilitated during that period, and the department's plans for future stabilization or rehabilitation of state-owned historic properties.

(d) Annually, the list presented to the general assembly of state-owned property the commissioner seeks approval to sell pursuant to section 166 of this title shall identify those properties the commissioner has identified as underutilized state-owned historic property pursuant to subsection (b) of this section.

(e) For purposes of this section, "historic property" has the same meaning as defined in 22 V.S.A. § 701.

Sec. 31. TRANSITION; FUNDING

(a) On or before July 15, 2011, the department of buildings and general services and the division for historic preservation shall develop a proposal for the program required in Sec. 30, 29 V.S.A. § 155(b), of this act and shall present the proposal to the chairs of the house committee on corrections and institutions and the senate committee on institutions. The chairs shall review the proposal and recommend to the joint fiscal committee whether or not to approve the proposal. After review of the proposal and the chairs' recommendations, the joint fiscal committee shall approve the proposal, disapprove the proposal, or direct the departments to amend and resubmit the proposal to the chairs by a date certain.

(b) Of the funds appropriated in Sec. 6(a)(3) of this act, the sum of \$100,000 is allocated in fiscal year 2012 to the historic property stabilization and rehabilitation special fund created in Sec. 30 of this act.